UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case No. 9-RC-83978

THE ARDIT COMPANY,

Employer,

and

INTERNATIONAL UNION OF BRICKLAYERS & ALLIED CRAFTWORKERS, OHIO KENTUCKY ADMINISTRATIVE DISTRICT COUNCIL, LOCAL UNION NO. 18,

Petitioner.

PETITIONER'S MEMORANDUM IN OPPOSITION TO REQUEST FOR REVIEW AND MEMORANDUM IN OPPOSITION TO MOTION TO STAY

MANGANO LAW OFFICES CO., L.P.A.

/s/Ryan K. Hymore

Ryan K. Hymore 10901 Reed Hartman Hwy., Ste. 207 Cincinnati, Ohio 45242 T. (513) 255-5888/F. (216) 397-5845 rkhymore@bmanganolaw.com

Counsel for Petitioner

Date: September 4, 2012

MEMORANDUM IN OPPOSITION TO REQUEST FOR REVIEW AND MOTION TO STAY

I. ISSUES PRESENTED

The Employer argues that the Regional Director erred by overruling the Employer's unsupported challenges to six ballots, which were not supported by good cause. Moreover, the Employer requests the Board to stay its consideration of this matter based on arguments previously rejected in *Center for Social Change, Inc.*, 358 NLRB No. 24 (Mar. 29, 2012).

II. ARGUMENTS AND AUTHORITIES

A. No Compelling Reasons Support the Employer's Request for Review.

"The Board will grant a request for review only where compelling reasons exist therefor." 29 CFR 102.67(c). To be sure, such a request may be granted only when the Board is presented with evidence of one of the following:

- (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.
- (2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
- (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

29 CFR 102.67(c)(1)-(4). The Employer has not demonstrated that any of the foregoing grounds are present. As such, its request for review should be denied.

B. It Is Axiomatic that Challenges Must Be Supported by Good Cause.

The Board's Rules and Regulations, Section 102.69(a), require a party to support its challenge to eligibility with "good cause." The authority relied upon by the Regional Director (and the Employer in its request for review) clearly requires an observer to have good cause at the time the challenge is lodged. *Fulton Bag & Prod. Co.*, 121 NLRB 268, 270 n.5 (1958). And unsupported challenges may be overruled forthwith. *E.g., William B. Patton Towing Co.*, 180 NLRB 64, 83 (1969) ("If a challenge is unsupported, the challenge will be overruled and this is adequate disposition of whether the challenge had been filed without good cause or adequate grounds."). The Employer's observer failed to satisfy this good cause standard. As such, it was proper for the Regional Director to overrule the challenges forthwith.

C. The Motion to Stay Should Be Denied.

For the reasons stated in *Center for Social Change, Inc.*, 358 NLRB No. 24 (Mar. 29, 2012), the Employer's motion to stay should be denied.

CONCLUSION

Based on the foregoing arguments, the Employer's request for review and motion to stay should be denied.

Respectfully submitted,

MANGANO LAW OFFICES CO., L.P.A.

s/Ryan K. Hymore 10901 Reed Hartman Hwy., Ste. 207 Cincinnati, Ohio 45242 T. (513) 255-5888/F. (216) 397-5845 rkhymore@bmanganolaw.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition was served this 4th day of September 2012 upon the Board and Regional Director Gary Muffley, Region 9, via electronic filing and by email upon the following:

Ron Mason, Esq. Aaron Tulencik, Esq.

Counsel for the Employer

s/Ryan K. Hymore

Ryan K. Hymore